

## **REMARKS/ARGUMENTS**

Applicants thank the Office for the final Office Action mailed June 25, 2008. The status of the claims is as follows.

Claims 1-39 are pending, and claims 1, 3, 8, 11, 15, 19, 21-23, 26, 29, 31-33, 35 and 38-39 have been amended herein;

Claims 19 and 26 are objected to for informalities;

Claims 11, 21 and 26 are rejected under 35 U.S.C. 112, second paragraph.

Claim 31 is rejected under 35 U.S.C. 101.

Claims 1, 3, 6, 8-9, 11-13, 23, 25, 32, 35 and 38-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Hoffman et al. (US 2005/0137973).

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman et al. in view of Dresden (US 2005/0021440).

Claims 4, 7, 10, 14 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman et al.

Claims 5 and 26-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman et al. in view of Abrams et al. (US 2002/0166117).

Claims 15-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman et al. in view of PR Newswire.

Claims 33, 34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman et al. in view of Hensley et al. (US 2004/0133790).

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman et al. in view of Hensley in further view of Abrams et al.

The objection and rejections are discussed below.

### **The Objection to claims 19 and 26**

Claims 19 and 26 stand objected to for informalities. This objection should be withdrawn because claim 19 has been amended, rendering the informality moot, and claim 26 has been amended as suggested by the Office.

**The Rejection of Claims 11, 21 and 26 under 35 U.S.C. 112, Second**

**Paragraph**

Claims 11, 21 and 26 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 11, 21 and 26 have been amended herein to overcome this rejection. As such, withdrawal of this rejection is respectfully requested.

**The Rejection of Claim 31 under 35 U.S.C. 101**

Claim 31 stands rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter. This rejection should be withdrawn as claim 31 has been amended herein to be drawn to a method.

**The Rejection of Claims 1, 3, 6, 8-9, 11-13, 23, 25, 32, 35, and 38-39 under 35 U.S.C. 102(e)**

Claims 1, 3, 6, 8-9, 11-13, 23, 25, 32, 35, and 38-39 stand rejected under 35 U.S.C. 102(e) as being anticipated by Hoffman. This rejection should be withdrawn because Hoffman does not teach each and every element as set forth in the subject claims and, therefore, does not anticipate claims 1, 3, 6, 8-9, 11-13, 23, 25, 32, 35, and 38-39.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). MPEP §2131.

Amended independent **claim 1** now also recites that the tracking includes gathering information relative to the execution and storing the information in secure storage that is protected from tampering. The Office cites to Hoffman paragraphs [0013], [0014] and [0067] as teaching storing of data. However, these paragraphs of Hoffman are silent regarding storing information in secure storage protected from tampering. Accordingly, Hoffman does not teach or suggest each and every element as set forth in

the subject claim, and this rejection should be withdrawn. Hensley discloses hiding and protecting a boot directory by intercepting access and entry requests to the directory. Thus, the boot directory is protected from access and entry; however, if a hacker or the like hacks into the boot directory, nothing prevents the hacker from tempering with the boot directory or the files stored therein. As such, Hensley does not make up for the deficiencies of Hoffman.

Amended independent **claim 8** recites aspects similar to those recited in claim 1 regarding a storage area protected from tampering. As such, the above-discussion regarding claim 1 applies *mutatis mutandis* to claim 8, and this rejection should be withdrawn.

Amended independent **claim 23** is directed towards a method including, *inter alia*, executing an alternate operating mode stored at a central location in response to recognizing in a primary operating mode of a remote computer system an event indicating a need for execution by the remote computer system of at least one chargeable technology. Such aspects are absent from Hoffman. Therefore, this rejection should be withdrawn. Hensley relates maintaining a back-up operating system in the main storage area of a disk drive (See Hensley paragraphs [0009] and [0010]) and does not teach or suggest the above-noted claim aspects.

Amended independent **claim 32** requires a bootable device operatively connected to the system and holding at least an alternate operating system for execution on said CPU and effective when executing for controlling the operation of the system. Hoffman does not teach or suggest such aspects. Thus, this rejection should be withdrawn. As noted above, Hensley relates maintaining a back-up operating system in the main storage area of a disk drive and, therefore, does not teach or suggest the subject claim aspects.

Amended independent **claim 35** requires a BIOS of the system that holds at least an alternate operating system for execution on said CPU in response to recognizing in the primary operating system an event indicating a need for execution of at least one chargeable technology. Accordingly, this rejection should be withdrawn. Hensley relates maintaining a back-up operating system within the main storage area and, thus, does not teach or suggest such aspects.

**Claims 3, 6, 9, 11-13, 25 and 38-39** depend from claims 1, 8, 23, 32 or 35 and are allowable at least by virtue of their dependencies.

**The Rejection of Claim 2 under 35 U.S.C. 103(a)**

Claim 2 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman et al. in view of Dresden. **Claim 2** depends from claim 1 and is allowable at least by virtue of this dependency.

**The Rejection of Claims 4, 7, 10, 14 and 24 under 35 U.S.C. 103(a)**

Claims 4, 7, 10, 14-18, 21-22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman. **Claims 4, 7, 10, 14 and 24** depend from claims 1, 15 and 23 and are allowable at least by virtue of their dependencies.

**The Rejection of Claims 5 and 26-31 under 35 U.S.C. 103(a)**

Claims 5 and 26-31 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman et al. in view of Abrams et al. **Claim 29** has been amended and recites aspects similar to those recited in claim 1 regarding a storage area protected from tampering. As such, the above-discussion regarding claim 1 applies *mutatis mutandis* to claim 29, and this rejection should be withdrawn. **Claims 5, 26-28 and 30-31** depend from claims 1, 23 and 29 and are allowable at least by virtue of their dependencies.

**The Rejection of Claims 15-22 under 35 U.S.C. 103(a)**

Claims 15-22 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman et al. in view of PR Newswire. This rejection should be withdrawn for the following reasons. Independent **claim 15** has been amended and now requires, *inter alia*, recognizing in a primary operating mode of a computer system an event indicating a need for execution by the computer system of at least one chargeable technology, entering an alternate operating mode stored in the BIOS of the system by initiating execution of an alternate operating system, and returning control of the system to the primary operating system for normal operation. The combination of Hoffman et al. and PR Newswire do not contemplate such aspects. Hence, the rejection of claim 15 should be withdrawn. As

noted *supra*, Hensley 2004/0133790 relates maintaining a back-up operating system within the main storage area and does not teach or suggest the aspects in amended claim 15. **Claims 16-22** depend from claim 15 and are allowable at least by virtue of their dependencies.

**The Rejection of Claims 33, 34 and 36 under 35 U.S.C. 103(a)**

Claims 33, 34 and 36 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman et al. in view of Hensley et al. **Claims 33 and 34** depend from claim 32, and **claim 36** depends from claim 35, and thus claims 33, 34 and 36 are allowable at least by virtue of their dependencies.

**The Rejection of Claim 37 under 35 U.S.C. 103(a)**

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman et al. in view of Hensley in further view of Abrams et al. **Claim 37** indirectly depends from claim 35 and is allowable at least by virtue of this dependency.

**Conclusion**

In view of the foregoing, it is submitted that the subject claims distinguish patentably and non-obviously over the prior art of record. An early indication of allowability is earnestly solicited.

Respectfully submitted,

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